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IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1637 of 2014
IN
Civil Writ Jurisdiction Case No. 3222 of 2014

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Krishna Prasad, son of Late Ramchandra Sah, Resident of Village- Obra, P.S.- Obra, District- Aurangabad.

.... Appellant

Versus

1. The State of Bihar.
2. The Zonal Education Dy. Director, Magadh Division, Gaya.
3. The Collector, Aurangabad.
4. The District Education Officer, Aurangabad.
5. The District Programme Officer (Establishment), Aurangabad.
6. The District Programme Officer (Mid-Day-Meal), Aurangabad.
7. The District Programme Officer (Account & Planning), Aurangabad.
8. The Education Area Officer, Daudnagar, District- Aurangabad.
9. The Block Education Officer, Obra Block, District- Aurangabad.

.... Respondents

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Appearance:
For the Appellant : Mr. Rajeev Kumar Singh, Advocate
Mr. Manoj Kumar, Advocate
Mr. Binay Kumar Singh, Advocate

For the Respondents: Mr. Roy Shivaji Nath, AAG III
Mr. Amrendra Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 04-02-2015

The appellant was working as a Teacher. On the occasion of marriage of his son, which was scheduled on 01.06.2009, he applied for leave from 28.05.2009 to 31.05.2009 and the School was on summer vacation from 01.06.2009 to 24.06.2009.

The appellant was arrested in connection with a criminal case, instituted against him under Section 498A, on 28.05.2009. He

remained in jail till 19.06.2009 and he was granted bail.

Alleging that the petitioner had drawn salary for the period during which he was in prison, departmental proceedings were initiated against him. He was also placed under suspension through order dated 09.09.2011. The petitioner submitted his explanation. Thereafter the disciplinary authority passed its order dated 27.01.2013, imposing punishment of stoppage of one increment with cumulative effect. It was also directed that the appellant is not entitled to any emoluments, for the period he was under suspension, other than subsistence allowance.

Feeling aggrieved by the order dated 27.01.2013, the appellant filed CWJC No. 3222 of 2014. His first contention was that the punishment of stoppage of one increment with cumulative effect is a major penalty under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules' for short) and the same could not have been imposed except by conducting disciplinary proceedings**.** It is pleaded that the punishment was imposed without conducting any enquiry at all. The second was that double punishment was imposed. The writ petition was contested by the respondents.

The learned Single Judge dismissed the writ petition through order dated 03.04.2014. Hence this appeal under Clause 10 of the

Letters Patent.

Heard Sri Rajeev Kumar Singh, learned counsel for the appellant, and Sri Roy Shivaji Nath, learned Additional Advocate General-III, for the respondents.

There are two points for consideration in this case. The first is that the punishment of stoppage of one increment with cumulative effect, which is a major punishment, was imposing without conducting any enquiry. The second is that the denial of emoluments for the period during which he was under suspension amounts to double punishment.

Taking the second contention first, it needs to be observed that mere denial of difference of pay for the period during which the employee was under suspension cannot be treated as a punishment at all. It is a requirement under law, that whenever the disciplinary proceedings are terminated, the disciplinary authority must indicate the manner in which the period, during which the employee was under suspension, must be treated. In a given case, the employee may be extended the balance of the emoluments, in case a clean chit is given or, in some cases, it may be withheld. Either way it cannot be treated as a punishment. Therefore, the second contention of the appellant cannot be accepted.

As regards first contention, it is not in dispute that the

punishment of stoppage of increment with cumulative effect is classified as a 'major penalty' under the Rules. It is well settled that major penalty can be imposed only after holding a departmental enquiry. Admittedly such an enquiry was not held here.

Strictly speaking, the order of punishment must be set aside and the matter be sent back to the disciplinary authority for fresh consideration and disposal. However, we feel it appropriate to treat the punishment of stoppage of one increment to be the one, without cumulative effect. The order of punishment dated 27.01.2013 is modified to the extent of stoppage of one increment without cumulative effect.

Accordingly, the appeal is partly allowed.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

Chandran/Md.Ibrarul

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